

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.(A) No.180 of 2007

Commissioner of Income Tax
Nungambakkam High Road
Chennai - 600 034. .. Appellant

Vs

M/s.Vijay Shanthi Finance Ltd.,
2nd Floor, Vijay Complex
3, Blackers Road, Mount Road
Chennai - 600 002. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 10.3.2006 made in ITA No.1826/Mds/1999 for the assessment year 1995-96 as against the order of the Commissioner of Income Tax (Appeals) XIII Chennai in I.T.A. No.172/97-98 dated 12.8.1999 as against the order of the Deputy Commissioner of Income Tax, Special Range, VIII Chennai -34 in PAN AAA CV 2593 E dated 29.1.98.

For Appellant : Mrs.Pushya Sitaraman
Sr. Standing Counsel (IT)

सत्यमेव जयते
J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Tribunal dated 10.3.2006 made in ITA No.1826/Mds/1999 for the assessment year 1995-96, raising the following common substantial questions of law:

"i. Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that an amount of Rs.1,40,727/- being the difference between the cost price and market price of the share is to be deleted?

ii. Whether on the facts and circumstances of the case, the Tribunal was right in law in not considering the fact that the assessee as per the books had valued the shares at cost price but had made the adjustments only in the income tax adjustment/ computation statement, which is not proper?

iii. Whether on the facts and circumstances of the case, the Tribunal is right in law in not considering the fact that very same claim was admitted for the assessment year 1996-97 by the assessee before the Settlement Commission and as such the same claim cannot be allowed for the assessment year 1995-96 also? and

iv. Whether on the facts and circumstances of the case, the Tribunal was right in law in not considering the fact that for the present assessment year 1995-96 alone, the assessee had valued the shares at market price whereas he had been adopting the cost price for the earlier assessment years, which was not the regular established rule of commercial practice and accountancy?"

2. The Revenue is the appellant. The assessee company claimed a sum of Rs.1,40,727/- being the difference between value of stock of shares as on 31.3.1995 valued at cost and its market value as on the same date. The Assessing Officer finding that the method of valuation of stock in trade was at cost price, whereas the valuation was actually done as per the market price disallowed the claim of the assessee. On appeal at the instance of the assessee, the Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer. On further appeal, the Tribunal held that the assessee is entitled to value the shares either on the cost price or at market price whichever is lower and accordingly deleted the addition of Rs.1,40,727/- being the difference between the cost price and market price of the shares. Hence, the Revenue has preferred this appeal raising the questions of law referred to above.

3. Mrs.Pushya Sitaraman, learned Senior Standing Counsel for the Revenue, fairly concedes that the issues raised in this appeal have been squarely covered in favour of the assessee and against the Revenue by the decision of the Apex Court in Sakthi Trading Co. v. Commissioner of Income Tax, [2001] 250 ITR 871 and the decision of this Court in Commissioner of Income Tax v. Karur

Vysya Bank Ltd., [2005] 273 ITR 510.

4. In Sakthi Trading Co. v. Commissioner of Income Tax, [2001] 250 ITR 871, the Apex Court held that when there was no cessation of business, the closing stock had to be valued at cost or market price, whichever was lower.

5. In Commissioner of Income Tax v. Karur Vysya Bank Ltd., [2005] 273 ITR 510, this Court held that a taxpayer is free to employ for the purpose of his trade, his own method of keeping accounts, and for that purpose, to value stock-in-trade either at cost or market price.

6. In the instant case, the Tribunal in clear terms held that the assessee is continuing its business and there was no cessation of business. We, therefore, find no illegality or infirmity in the order of the Tribunal in holding that the closing stock can be valued either at market price or cost price whichever is lower. Hence, finding no substantial question of law arising for our consideration, this appeal is dismissed. No costs.

Sd/-
Asst. Registrar.

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To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Besant Nagar, Rajaji Bhavan,
Madras Bench "B", Chennai.

2.The Commissioner of Income Tax
(Appeals)-XIII, Chennai.

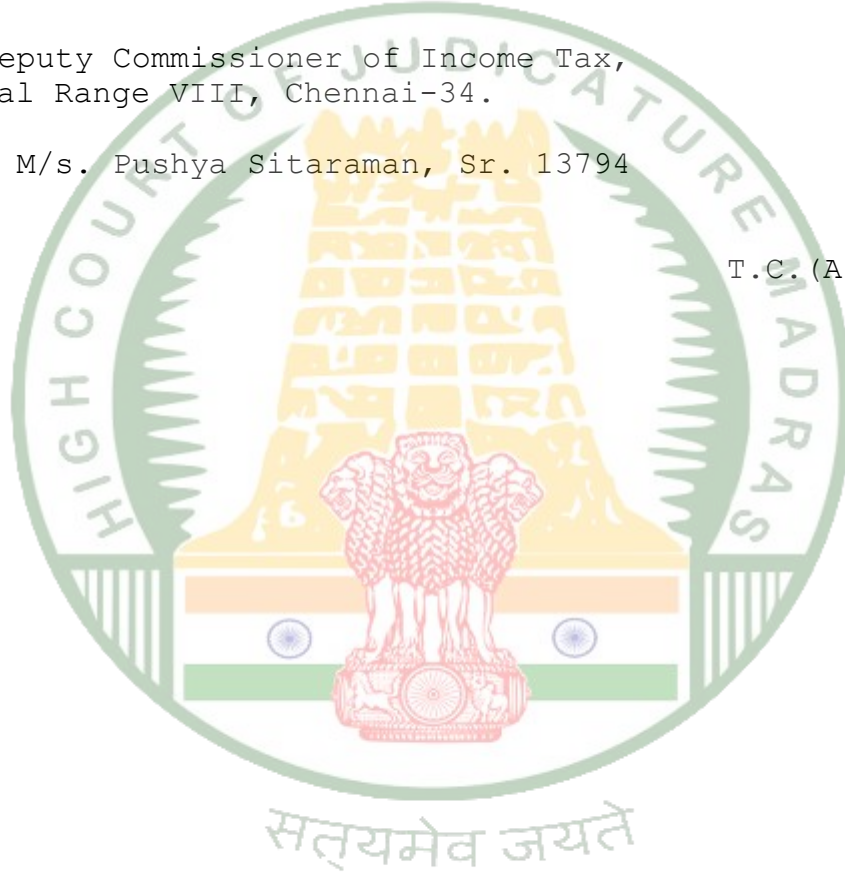
3.The Commissioner of Income Tax
Chennai.34

4.The Deputy Commissioner of Income Tax,
Special Range VIII, Chennai-34.

1 cc to M/s. Pushya Sitaraman, Sr. 13794

T.C.(A) No.180 of 2007

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